

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,,

Plaintiff,

v.

TELECARE MENTAL HEALTH
SERVICES OF WASHINGTON, INC.,

Defendant.

CASE NO. 2:21-cv-01339-BJR

**STIPULATED PROTECTIVE
ORDER REGARDING
CONFIDENTIALITY OF
DISCOVERY MATERIALS**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 As used in this Order, “Confidential Information” means information designated as
3 “CONFIDENTIAL” by the designating party that falls within one or more of the following
4 categories: (a) information prohibited from disclosure by statute; (b) trade secrets and commercial
5 information that provide a competitive advantage to a non-party; (c) medical information
6 concerning any individual; (d) personal identifying information including social security numbers,
7 dates of birth, personal addresses, phone numbers or email addresses, personal financial
8 information; (e) income tax documents; and (f) information that will subject a party, non-party, or
9 the public to specific prejudice or harm sufficient for the designating party to believe in good faith
10 that it will succeed on a motion to seal under Local Civil Rule 5(g)(3)(B). Information or
11 documents that are available to the public may not be designated as Confidential Information.

12 3. SCOPE

13 Materials produced or adduced in discovery, including initial disclosures, responses to
14 discovery requests, deposition testimony and exhibits, and information derived directly therefrom
15 (hereinafter collectively “documents”), may be subject to this Order concerning Confidential
16 Information as defined above. This Order is subject to the Local Rules of this District and the
17 Federal Rules of Civil Procedure on matters of procedure and calculation of time periods..

18 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

19 4.1 Basic Principles. All documents, testimony, and other materials produced by the
20 parties in this case and labeled “CONFIDENTIAL” shall be used only for the purposes of this
21 litigation, including any appeal thereof.

22 4.2 Disclosure of “CONFIDENTIAL” Information or Items.

23 (a) The parties and counsel for the parties shall not disclose or permit the disclosure
24 of any Confidential Information to any third person or entity except as set forth in subparagraphs
25 (1)-(8). Subject to these requirements, the following categories of persons may be allowed to
26 review Confidential Information:

1 (1) Counsel. Counsel for the parties and employees of counsel who have
2 responsibility for the action;

3 (2) Parties. Individual parties and employees of a party but only to the extent
4 counsel determines in good faith that the employee's assistance is reasonably necessary
5 to the conduct of the litigation in which the information is disclosed;

6 (3) Charging Party, Jason Hautala;

7 (4) The Court and its personnel;

8 (5) Contractors. Those persons specifically engaged for the limited purpose of
9 making copies of documents or organizing or processing documents, including outside
10 vendors hired to process electronically stored documents;

11 (6) Consultants and Experts. Consultants, investigators, or expert employed
12 by the parties or counsel for the parties to assist in the preparation and trial of this action
13 but only after such persons have completed the certification contained in Attachment A,
14 Acknowledgment of Understanding and Agreement to Be Bound;

15 (7) Author or recipient. The author or recipient of the document (not including
16 a person who received the document in the course of litigation); and

17 (8) Others by Consent. Other persons only by written consent of the
18 producing party or upon order of the Court and on such conditions as may be agreed or
19 ordered.

20 (b) Records marked "CONFIDENTIAL - FOR ATTORNEYS' EYES ONLY" shall
21 be disclosed to and reviewed only by attorneys of record for the parties. Such documents and
22 information shall not be disclosed to the parties or as detailed in paragraph (a)(1)-(7) above.

23 (c) Control of Documents. Counsel for the parties shall make reasonable efforts to
24 prevent unauthorized or inadvertent disclosure of Confidential Information. Counsel shall
25 maintain the originals of the forms signed by persons acknowledging their obligations under this
26 Order for a period of three years after the termination of the case.

1 4.3 Filing Confidential Material. Before filing confidential material or discussing or
2 referencing such material in court filings, the filing party shall confer with the designating party,
3 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
4 remove the confidential designation, whether the document can be redacted, or whether a motion
5 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
6 designating party must identify the basis for sealing the specific confidential information at issue,
7 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
8 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
9 the standards that will be applied when a party seeks permission from the court to file material
10 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
11 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
12 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
13 the strong presumption of public access to the Court's files.

14 Any party, other than the designating party, that anticipates filing any material that has
15 been designated as Confidential Information must provide reasonable notice to the designating
16 party of the proposed filing, so that the designating party will have ample time, if it so desires, to
17 file a motion for leave to file the material in question under seal.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
20 or non-party that designates information or items for protection under this Order must take care to
21 limit any such designation to specific material that qualifies under the appropriate standards. The
22 designating party must designate for protection only those parts of material, documents, items, or
23 oral or written communications that qualify, so that other portions of the material, documents,
24 items, or communications for which protection is not warranted are not swept unjustifiably within
25 the ambit of this Order.
26

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
2 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
3 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
4 and burdens on other parties) expose the designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it designated for
6 protection do not qualify for protection, the designating party must promptly notify all other parties
7 that it is withdrawing the mistaken designation.

8 (a) A party may designate a document as Confidential Information for protection under
9 this Order by placing or affixing the words "CONFIDENTIAL" on the document and on all
10 copies in a manner that will not interfere with the legibility of the document. As used in this
11 Order, "copies" includes electronic images, duplicates, extracts, summaries or descriptions that
12 contain the Confidential Information. The marking "CONFIDENTIAL" shall be applied prior to
13 or at the time the documents are produced or disclosed. Applying the marking
14 "CONFIDENTIAL" to a document does not mean that the document has any status or protection
15 by statute or otherwise except to the extent and for the purposes of this Order. Any copies that
16 are made of any documents marked "CONFIDENTIAL" shall also be so marked, except that
17 indices, electronic databases or lists of documents that do not contain substantial portions or
18 images of the text of marked documents and do not otherwise disclose the substance of the
19 Confidential Information are not required to be marked.

20 (b) Medical information or documents of any non-party individual, including, but not
21 limited to, current and former employees of Defendant shall be marked "CONFIDENTIAL -
22 FOR ATTORNEYS' EYES ONLY."

23 (c) The designation of a document as Confidential Information is a certification by an
24 attorney or a party appearing pro se that the document contains Confidential Information as
25 defined in this Order.

1 (d) Except as otherwise provided in this Order, or as otherwise stipulated or ordered,
2 disclosure or discovery material that qualifies for protection under this Order must be clearly so
3 designated before or when the material is disclosed or produced.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this
5 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
6 ordered, disclosure or discovery material that qualifies for protection under this agreement must
7 be clearly so designated before or when the material is disclosed or produced.

8 (a) Testimony given in deposition or in other pretrial proceedings: the parties and any
9 participating non-parties must identify on the record, during the deposition or other pretrial
10 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
11 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
12 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
13 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
14 at trial, the parties shall follow the meet and confer process outlined in section 6.2, below.

15 (b) Other tangible items: the producing party must affix in a prominent place on the
16 exterior of the container or containers in which the information or item is stored the word
17 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
18 the producing party, to the extent practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate a document
20 as Confidential Information does not, standing alone, waive the right to so designate the document.
21 If a party designates a document as Confidential Information after it was initially produced, the
22 receiving party, on notification of the designation, must make a reasonable effort to assure that the
23 document is treated in accordance with the provisions of this Order. The receiving party or its
24 counsel shall not disclose such documents or materials if that party knows or reasonably should
25 know that a claim of confidentiality would be made by the producing party. No party shall be
26 found to have violated this Order for failing to maintain the confidentiality of material during a

1 time when that material has not been designated Confidential Information, even where the failure
2 to so designate was inadvertent and where the material is subsequently designated Confidential
3 Information.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
6 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
8 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the
10 original designation is disclosed.

11 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
12 regarding confidential designations without court involvement. Any motion regarding confidential
13 designations or for a protective order must include a certification, in the motion or in a declaration
14 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
15 affected parties in an effort to resolve the dispute without court action. The certification must list
16 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
17 to-face meeting or a telephone conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
19 intervention, the designating party may file and serve a motion to retain confidentiality under Local
20 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
21 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
22 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
23 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
24 the material in question as confidential until the court rules on the challenge.

25 Applications to the Court for an order relating to materials or documents designated
26 Confidential Information shall be by motion. Nothing in this Order or any action or agreement of

1 a party under this Order limits the Court's power to make orders concerning the disclosure of
2 documents produced in discovery or at trial.

3 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION

5 (a) If a receiving party is served with a subpoena or an order issued in other litigation
6 that would compel disclosure of any material or document designated in this action as
7 Confidential Information, the receiving party must promptly notify the designating party, in
8 writing, and include a copy of the subpoena or court order.

9 (b) The receiving party must promptly inform in writing the party who caused the
10 subpoena or order to issue in the other litigation that some or all of the material covered by the
11 subpoena or order is the subject of this Order.

12 (c) The receiving party must cooperate with respect to all reasonable procedures
13 sought to be pursued by the designating party whose confidential material may be affected. The
14 obligations set forth in this paragraph remain in effect while the party has in its possession,
15 custody or control Confidential Information by the other party to this case.

16 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
18 material to any person or in any circumstance not authorized under this agreement, the receiving
19 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
20 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
21 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
22 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
23 Bound" that is attached hereto as Attachment A. Counsel shall maintain the originals of the forms
24 signed by persons acknowledging their obligations under this Order for a period of three years
25 after the termination of the case.
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9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

(a) Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

(b) Obligations at Conclusion of Litigation. One copy of Confidential Information and documents marked “CONFIDENTIAL” under this Order may be retained by counsel. Any retained Confidential Information shall continue to be protected under this Order. An attorney may use his or her own work product in subsequent litigation, provided that its use does not disclose or use Confidential Information.

(c) The entry of this Protective Order should not be interpreted as limiting or overriding the Equal Employment Opportunity Commission’s obligation to maintain copies of its files pursuant to and in accordance with the Federal Records Act.

(d) Deletion of Documents filed under Seal from Electronic Case Filing (ECF) System. Filings under seal shall be deleted from the ECF system only upon order of the Court.

11. ORDER SUBJECT TO MODIFICATION

This Order shall be subject to modification by the Court on its own initiative or on motion of a party or any other person with standing concerning the subject matter.

12. NO PRIOR JUDICIAL DETERMINATION

This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any document or material designated Confidential Information by counsel or the parties is entitled to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

13. PERSONS BOUND

This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

For Plaintiff, U.S. Equal Employment
Opportunity Commission

ROBERTA STEELE
Regional Attorney

MARCIA MITCHELL
Supervisory Trial Attorney

MAY CHE
Senior Trial Attorney

ANNABEL POLLINI
Trial Attorney

/s/ May Che

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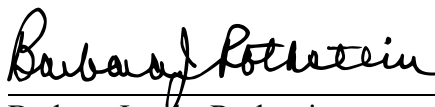
For Defendant Telecare Mental Health
Services of Washington, Inc.

/s/ Helen M. McFarland
Helen M. McFarland (WSBA # 51012)
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999 Third Avenue, Suite 4700
Seattle, Washington 98104-4041
Telephone: (206) 946-4923
Facsimile: (206) 299-9974

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
4 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
5 documents, including the attorney-client privilege, attorney work-product protection, or any other
6 privilege or protection recognized by law.

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8 DATED this 1st day of July, 2022.

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11 Barbara Jacobs Rothstein
12 U.S. District Court Judge
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ATTACHMENT A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,**

Case No. 21-CV-01339 BJR

Plaintiff,

v.

**TELECARE MENTAL HEALTH
SERVICES OF WASHINGTON, INC.,**

Defendant.

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *Equal Employment Opportunity Commission v. Telecare Mental Health Services of
Washington, Inc.*, Case No. 21-CV-01339 BJR. I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the provisions
of this Order.

1 I further agree to submit to the jurisdiction of the United States District Court for the
2 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
3 Order, even if such enforcement proceedings occur after termination of this action.

4 Name: _____

5 Job Title: _____

6 Employer: _____

7 Business Address:

8 Date: _____

9 City and State where sworn and signed: _____

10 Signature: _____